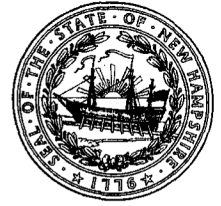




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

May 16, 2005

W. Robert Clark  
HC 68 Box 142  
Hillsboro, NH 03244

Re: Docket No. AF 04-064 Motion to Accept Settlement Agreement

Dear Mr. Clark:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on May 12, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**

Michael P. Sclafani,  
Legal Assistant

cc: Anthony P. Giunta, PG., Director, Waste Management Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Lynn Woodard, DES WMD  
Thomas Beaulieu, DES WMD  
Tammy Calligandes, DES WMD

W. Robert Clark  
HC 68 Box 142  
Hillsboro, NH 03244

**ADMINISTRATIVE FINE**  
**No. AF 04-064**

Re: Hillsboro Corner Store, Routes 9 & 31  
Hillsboro, NH – UST ID # 0-112249

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Waste Management Division (“the Division”) and W. Robert Clark, parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services (“DES”), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.

2. W. Robert Clark is the registered facility owner of three underground storage tank (“UST”) systems at the Hillsboro Corner Store facility (“the Facility”), further identified as UST # 0-112249, located on real property at Routes 9 & 31, Hillsboro, NH (“the Property”).

3. On September 7, 2004, the Division issued Notice of Proposed Administrative Fine AF 04-064 (“the Notice”) to W. Robert Clark, seeking fines totaling \$4,500, for violations of Env. Wm 1401.

4. Specifically, the Notice cited W. Robert Clark for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for all three USTs in accordance with RSA 146-C:5 and Env-Wm 1401.11. Pursuant to Env-C 607.05(a) the Division sought a fine of \$1,500.

5. The Notice further cited W. Robert Clark for violating Env-Wm 1401.33 for failing to install corrosion protection for the flex connector piping for all three USTs. Pursuant to Env-C 607.03(f) the Division sought a fine of \$3,000.

*Done in May of 2004*

6. In order to settle this matter, the Division and W. Robert Clark have agreed to the terms of this Settlement Agreement (“Agreement”), as set forth herein.

7. Of the proposed fine in the amount of \$4,500 20% or \$900 shall be suspended due to the respondent’s non-continuing or one-time offense. An additional 20% or \$900 shall be suspended due to the respondent’s good faith effort to comply with the applicable law. An additional 20% or \$900 shall be suspended due to the respondent’s cooperation in returning the violation to compliance. An additional 20% or \$900 shall be suspended due to the respondent’s small business status.

8. The suspended portion of the proposed fine, in the amount of \$3,600, is contingent on W. Robert Clark maintaining the subject facility in compliance with New Hampshire Administrative Rules Env-Wm 1401 for a period of two years from the date of the execution of this document. If W. Robert Clark fails to maintain compliance during the two-year period, the suspended portion of the proposed fine in the amount of \$3,600 shall become due and payable immediately. If W. Robert Clark maintains compliance for the prescribed two-year period, the suspended portion of the fines shall be waived.

9. W. Robert Clark agrees to pay the remaining \$900 upon execution of this Agreement.

10. Payment under Paragraph #9, and any payment that becomes due pursuant to Paragraph #8 shall be paid by a certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

11. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

12. By executing this Agreement, W. Robert Clark waives his right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

13. The effective date of this Agreement will be the date on which it is signed by W. Robert Clark, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

14. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

4-15-05

Date

W. Robert Clark  
W. Robert Clark, Owner  
Hillsboro Corner Store Facility

DES Waste Management Division

Anthony Giunta  
Anthony Giunta, P.G. Director

5/11/05  
Date

This Motion to Accept Settlement agreement is granted this 12 day of May, 2005.

Michael P. Rolin  
Michael P. Rolin, Commissioner  
Department of Environmental Services